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Supreme Court of the United States.

October Term, 1928.

ARTHUR E. COLGATE, Administrator of the Estate of Clinton G. Colgate, Deceased, *Appellant*,
v.
THE UNITED STATES.

No. [illegible]

Statement in Support of Jurisdiction on Appeal.

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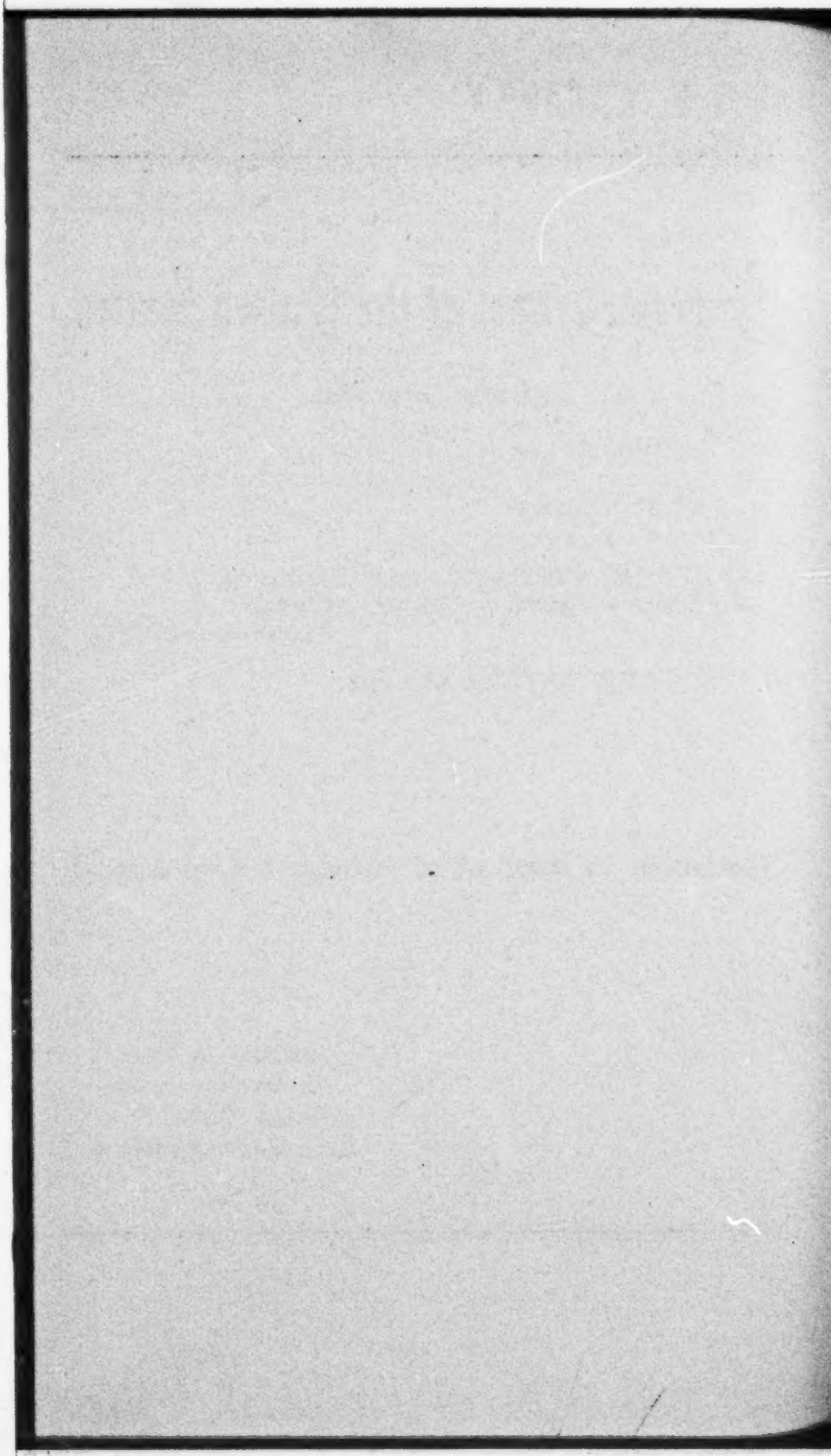


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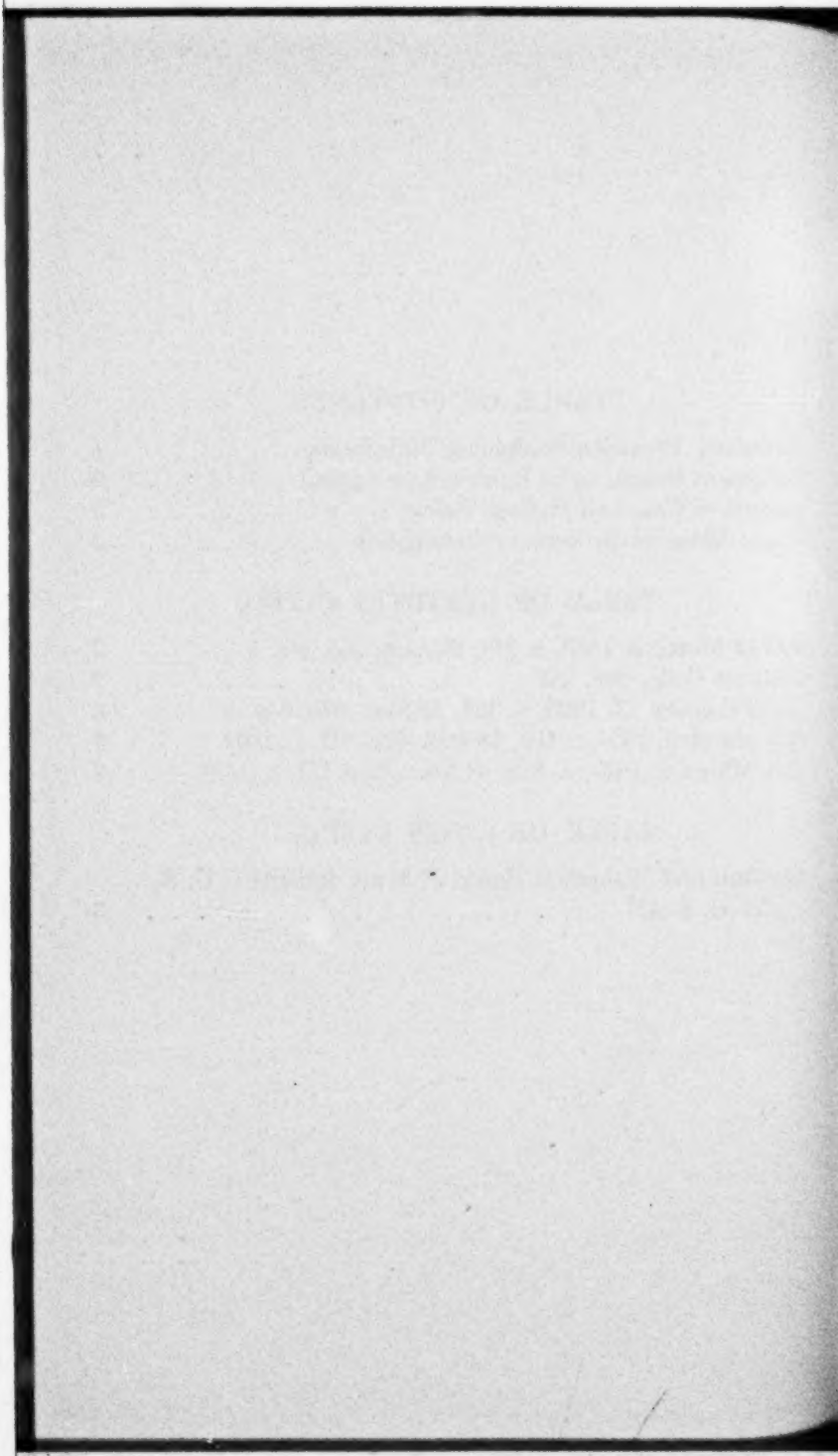
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Supreme Court of the United States.

October Term, 1928.

ARTHUR E. COLGATE, Administrator of the Estate of Clinton G. Colgate, Deceased, *Appellant*, v. THE UNITED STATES. | No. 869.

STATEMENT IN SUPPORT OF JURISDICTION ON APPEAL.

Statutory Provision Sustaining Jurisdiction.

The provision believed to sustain the jurisdiction of this court on appeal is that contained in the first proviso of the following act (44 Stat. Part III, p. 1807):

"Chap. 408. An Act For the relief of Arthur E. Colgate, administrator of Clinton G. Colgate, deceased.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the findings of fact made by the Court of Claims in the case of Arthur E. Colgate, administrator of the estate of Clinton G. Colgate, deceased, against the United States, Congressional Numbered 6063, Senate Document Numbered 703, Sixty-fourth Congress, second session, be, and they are hereby, referred back to the Court of Claims with jurisdiction to render judgment as the findings of fact heretofore found and the law require: *Provided*, That either party hereto may appeal to the Supreme Court of the United States upon or from any conclusion of law or judgment, from which appeals now lie in other cases, at any time within ninety days after the rendition of judgment: *Provided further*, That the amount of any such judgment shall not exceed the sum of $50,000: *And provided further*, That such notice hereof shall be given to the Attorney General of the United States as may be provided by orders of said court, and it shall be the duty of the Attorney General

to cause one of his assistants to appear and defend for the United States.

"Approved, March 3, 1927."

Judgment Sought to be Reviewed on Appeal.

The judgment sought to be reviewed was rendered February 4, 1929, and dismissed the petition of the appellant, claiming a judgment of $50,000 against the United States. (R. 17.) Application for appeal was presented to the Court of Claims April 23, 1929, and was allowed by the Court April 26, 1929 (R. 18).

Nature of Case and Rulings Below.

The claim was for the use of a patented invention by the United States. It had come before the Court of Claims by reference under the Bowman Act of March 3, 1883, c. 116, 22 Stat. 485, Sec. 1, "An Act to afford assistance and relief to Congress and the executive departments in the investigation of claims and demands against the government."

The ruling of the court below was adverse to the validity of the patent on the ground that although it had been sustained in a number of different suits referred to partly in Finding V (R. 7) and partly in the opinion (R. 13), a letter of the original inventor withdrawing his application was fatal to the renewal of the application and to the validity of the patent issued thereunder. This raises a question of law reviewable by this court.

Cases Believed to Sustain Jurisdiction.

The word "appeal" when used in legislation relative to the appellate jurisdiction of this court is always used in contradistinction to a writ of certiorari.

The fact that the length of time, ninety days, is that fixed by the old law, Judicial Code, Section 242, and not the three months allowed by the act of February 13, 1925, c. 229, 43 Stat. 936, Sec. 8, for a writ of certiorari, shows that it was the old right of appeal and not the new right obtained by a writ

of certiorari which Congress was conferring by the special act.

A similar special act allowing an appeal, approved March 4, 1927, was so construed by this court. In *Sisseton and Wahpeton Bands of Sioux Indians* v. *United States*, 277 U. S. 424, the act provided:

"That the plaintiffs or complainants in suit numbered 33371 in the Court of Claims of the United States be, and they are hereby, granted one year within which to appeal from any and all orders, judgments or decrees rendered against them in the trial of said action heretofore had:" (44 Stat. Part III, p. 1847).

This court said, 277 U. S. 427:

"The present appeal was taken under Act of Congress approved March 4, 1927, c. 522, 44 Stat. Part III, p. 1847. It specifically granted to appellants one year from date within which to appeal and was intended, we think, to confer a right of appeal as distinguished from the right to petition for certiorari within three months of the judgment, conferred by sections 3 and 8 of the jurisdictional Act of February 13, 1925."

The appeal in that case, it is true, was by legislation enacted after the judgment of the Court of Claims, while here it was by an act passed before judgment. The distinction, it is submitted, is not material.

For greater caution a petition for a writ of certiorari has also been filed, in support of which a separate brief is presented contemporaneously with this Statement in Support of Jurisdiction on Appeal.

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